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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/840,242	04/24/2001	Jeffrey Richard Conrad	10006621-017	3491

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HEWLETT-PACKARD COMPANY  
Intellectual Property Administration  
P.O. Box 272400  
Fort Collins, CO 80527-2400

EXAMINER

PHAN, TAM T

ART UNIT

PAPER NUMBER

2144

DATE MAILED: 04/15/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)	
	09/840,242	CONRAD ET AL.	
	Examiner	Art Unit	
	Tam (Jenny) Phan	2144	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 22 November 2004.

2a) This action is **FINAL**.      2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-18 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1-18 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on 24 April 2001 is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \*    c) None of:

- Certified copies of the priority documents have been received.
- Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
- Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) Notice of References Cited (PTO-892)

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.

4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.

5) Notice of Informal Patent Application (PTO-152)

6) Other: \_\_\_\_\_.

### **DETAILED ACTION**

1. This application has been examined. Amendment received on 11/22/2004 has been entered. Claims 1-16 are previously presented. Claims 17-18 are new.
2. Claims 1-18 are presented for examination.

#### ***Priority***

3. No priority claims have been made.
4. The effective filing date for the subject matter defined in the pending claims in this application is 04/24/2001.

#### ***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

6. Claims 1, 5-6, 8-9, 13-14, and 16 are rejected under 35 U.S.C. 102(e) as being anticipated by Pithawala et al. (U.S. Patent Number 6,747,957), hereinafter referred to as Pithawala.
7. Regarding claim 1, Pithawala disclosed a method of managing a network comprising: transmitting a signal from a network manager to each of plural nodes to determine the availability of each node; determining a response time of each node using the signal; and relaying the response time of each node to a database of the network manager (Title, Abstract, Figure 7, column 8 lines 29-38, column 11 lines 4-13, lines 27-42).

8. Regarding claim 5, Pithawala disclosed a method wherein the signal is an Internet Control Message Protocol (ICMP) echo request and an ICMP echo reply (Abstract, column 3 lines 3-15, column 6 line 57 - column 7 line 7).
9. Regarding claim 6, Pithawala disclosed a method wherein the plural nodes comprise substantially all nodes of the network (column 1 line 61-column 2 line 3).
10. Regarding claim 8, Pithawala disclosed a method wherein the network manager is a Network Node Manager (column 3 lines 39-53).
11. Regarding claims 9, 13-14, and 16, the computer-based system for managing a network corresponds directly to the method of claims 1, 5-6, and 8, and thus these claims are rejected using the same rationale.
12. Since all the limitations of the claimed invention were disclosed by Pithawala, claims 1, 5-6, 8-9, 13-14, and 16 are rejected.
  
13. Claims 1, 5-6, 8-9, 13-14, and 16 are rejected under 35 U.S.C. 102(e) as being anticipated by Stevenson et al. (U.S. Patent Number 6,704,284), hereinafter referred to as Stevenson.
14. Regarding claim 1, Stevenson disclosed a method of managing a network comprising: transmitting a signal from a network manager to each of plural nodes to determine the availability of each node; determining a response time of each node using the signal; and relaying the response time of each node to a database of the network manager (Title, column 3 line 63-column 4 line 21, column 4 lines 48-55, column 5 lines 1-27, column 5 line 63-column 6 line 7).

15. Regarding claim 5, Stevenson disclosed a method wherein the signal is an Internet Control Message Protocol (ICMP) echo request and an ICMP echo reply (column 4 lines 48-55).

16. Regarding claim 6, Stevenson disclosed a method wherein the plural nodes comprise substantially all nodes of the network (column 3 line 63-column 4 line 21).

17. Regarding claim 8, Stevenson disclosed a method wherein the network manager is a Network Node Manager (column 1 lines 33-42, column 4 lines 46-55).

18. Regarding claims 9, 13-14, and 16, the computer-based system for managing a network corresponds directly to the method of claims 1, 5-6, and 8, and thus these claims are rejected using the same rationale.

19. Since all the limitations of the claimed invention were disclosed by Stevenson, claims 1, 5-6, 8-9, 13-14, and 16 are rejected.

***Claim Rejections - 35 USC § 103***

20. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

21. Claims 2-4 and 10-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pithawala et al. (U.S. Patent Number 6,747,957), hereinafter referred to as Pithawala, in view of Forman et al. (U.S. Patent Number 6,178,449), hereinafter referred to as Forman.

22. Regarding claim 2, Pithawala disclosed a method of managing a network comprising: transmitting a signal from a network manager to each of plural nodes to determine the availability of each node; determining a response time of each node using the signal; and relaying the response time of each node to a database of the network manager (Title, Abstract, Figure 7, column lines 4-13, lines 27-42).

23. Pithawala taught the invention substantially as claimed. However, Pithawala did not expressly teach receiving the response time of each node in a standard format; and reformatting the response time of each node into a flat file format prior to relaying the response time of each node to the database.

24. Pithawala suggested exploration of art and/or provided a reason to modify the method of managing a network with the flat file format feature (column 11 lines 28-43).

25. Forman disclosed receiving the response time of each node in a standard format; and reformatting the response time of each node into a flat file format prior to relaying the response time of each node to the database (Figure 4, column 5 lines 37-52, column 7 line 60-column 8 line 6).

26. It would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the method of Pithawala with the teachings of Forman to include the flat file format feature historical log files are typically flat files, and data is written to and read from these files by programs on the local system or remote systems using standard file input/output operations and remote file transfer mechanisms (Forman, column 5 lines 37-52).

27. Regarding claim 3, Pithawala and Forman combined disclosed a method wherein the flat file format comprises: a start time of the response time and a sampling interval; an end time of the sampling interval; the response time in milliseconds; and a node identification number (Pithawala, Figure 7, column 6 line 57 - column 7 line 7, column 7 lines 54-62, column 8 lines 9-19, lines 30-38; Forman, Figures 4 & 7, column 5 lines 37-52, column 7 line 60 - column 8 line 6).

28. Regarding claim 4, Pithawala disclosed a method wherein the node identification number is an IP address (Figure 7, column 9 lines 60-65, column 11 lines 53-67).

29. Regarding claims 10-12, the computer-based system for managing a network corresponds directly to the method of claims 2-4, and thus these claims are rejected using the same rationale.

30. Since all the limitations of the claimed invention were disclosed by the combination of Pithawala and Forman, claims 2-4 and 10-12 are rejected.

31. Claims 7, 15, and 17-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pithawala et al. (U.S. Patent Number 6,747,957), hereinafter referred to as Pithawala, in view of Trofin et al. (U.S. Patent Number 6,178,449), hereinafter referred to as Trofin.

32. Regarding claim 7, Pithawala disclosed a method of managing a network comprising: transmitting a signal from a network manager to each of plural nodes to determine the availability of each node; determining a response time of each node using the signal; and relaying the response time of each node to a database of the network

manager (Title, Abstract, Figure 7, column 8 lines 29-38, column 11 lines 4-13, lines 27-42).

33. Pithawala taught the invention substantially as claimed. However, Pithawala did not expressly teach steps of designating at least one of the plural nodes as one of a high priority node and a low priority node; and transmitting the signal to each high priority node more frequently than the signal is transmitted to each low priority node.

34. Pithawala suggested exploration of art and/or provided a reason to modify the method of managing a network with the priority feature.

35. Trofin disclosed a method comprising designating at least one of the plural nodes as one of a high priority node and a low priority node; and transmitting the signal to each high priority node more frequently than the signal is transmitted to each low priority node (column 3 lines 54-67, column 4 lines 14-21, lines 25-37, column 8 lines 36-44).

36. It would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the method of Pithawala with the teachings of Trofin to include the priority feature in order to detect variations in the functionality of high priority nodes quickly since high priority nodes may be polled more often (Trofin, column 8 lines 36-44).

37. Regarding claim 17, Pithawala and Trofin disclosed a method wherein the response time is updated based on a node priority (Pithawala, column 8 lines 29-38, column 11 lines 4-13, lines 27-42; Trofin, column 3 lines 54-67, column 4 lines 14-21, lines 25-37, column 8 lines 36-44).

38. Regarding claims 15 and 18, the computer-based system for managing a network corresponds directly to the method of claims 7 and 17, and thus is rejected using the same rationale.

39. Since all the limitations of the claimed invention were disclosed by the combination of Pithawala and Trofin, claims 7, 15, and 17-18 are rejected.

***Response to Arguments***

40. Applicant's arguments filed 11/22/2004 have been fully considered but they are not persuasive.

41. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., "using a database of measured response times from plural nodes to monitor a network of nodes") are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

42. In response to applicant's argument that "The network availability as disclosed in the Pithawala patent is not determined based on relaying the response time of each of plural nodes to a database of a network manager", it is submitted that Pithawala disclosed "The present invention may also measure availability to/from unique locations in the network using an RTR (Response Time Reporter) agent. RTR is also called SAA (Service Assurance Agent). RTR is a software module residing on a Cisco router and allows response time or availability measurement to/from unique points in the network..." (column 8 lines 29-38) and "At step 650, process 600 searches a database

of network management information for all alerts, and logs all critical messages from devices related to the failed path(s) determined at step 635 within a six-minute window. That is, process 600 searches a the network management information database for all alerts and critical messages that are dated between 3 minutes before the network outage and 3 minutes after the network outage. Network management information databases, or network analysis databases such as NATKit (available from Cisco Systems, Inc.), are network management applications used by network support organizations to proactively collect network information from a customer network and report results back to the network support organizations, and are well known in the art...(column 11 lines 28-43). Thus, it should be obvious that one of the embodiments of the network availability as disclosed by Pithawala is determined based on sending the response time of each of the plural nodes to a network management database.

43. In response to applicant's argument that "the Stevenson patent does not disclose relaying the response time of each node to a database", the Examiner respectfully disagrees. Stevenson disclosed, "Each managed device includes a processor which monitors and stores data in memory on the device, and such data may be represented to an external management station by a MIB (management information base), as is well known in the art, including data relating to inter alia data traffic at the device..." (column 3 line 67-column 4 lines 5), it is submitted that although Stevenson did not describe in details the forwarding of the time taken to receive a response from the device to a database since this feature was well known in the art, Stevenson did disclose the use of remote management information base to store monitoring data. Thus, it should be

obvious that the monitoring data or the time taken to receive a response from the device would need to be forwarding to the remote management information base for storage purposes.

44. As the rejection reads, Examiner asserts that the combination of these teachings render the claimed invention obvious.

***Conclusion***

45. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

46. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Refer to the enclosed PTO-892 for details.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tam (Jenny) Phan whose telephone number is (571) 272-3930. The examiner can normally be reached on M-F 9:00-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, William Cuchlinski can be reached on (571) 272-3925. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-3900.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



William Cuchlinski  
SPE  
Art Unit 2144  
(571) 272-3925

tp  
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